



February 16, 2007

SENATE BILL No. 264

DIGEST OF SB 264 (Updated February 14, 2007 2:22 pm - DI 106)

Citations Affected: IC 35-50.

Synopsis: Habitual offender. Provides that the state may seek to have a person sentenced as a habitual offender by alleging and proving that the person has accumulated at least two prior unrelated felony convictions. Specifies that the state may use the same prior unrelated felony convictions in a later habitual offender proceeding that were used in an earlier habitual offender proceeding. Permits the state to introduce evidence of all of a person's prior convictions in the habitual offender sentencing hearing. Removes a provision from the existing habitual offender law providing that certain drug convictions are not considered prior convictions for purposes of the habitual offender law and provides that, if a person's current conviction and all prior convictions are for certain drug offenses, the person may not be charged as a standard habitual offender. Permits a person to be charged as a habitual drug offender if the person is convicted of certain drug offenses and has three prior unrelated drug offenses.

Effective: July 1, 2007.

Walker, Young R, Drozda

January 8, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
February 15, 2007, amended, reported favorably — Do Pass.

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SB 264—LS 6917/DI 106+



February 16, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 264

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-50-2-8, AS AMENDED BY P.L.71-2005,
2 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 8. (a) **This section does not apply to a person**
4 **whose underlying felony offense and prior unrelated felony**
5 **convictions are all felony drug offenses (as defined in section 8.3 of**
6 **this chapter).** Except as otherwise provided in this section, the state
7 may seek to have a person sentenced as a habitual offender for any
8 felony by alleging, on a page separate from the rest of the charging
9 instrument, that the person has accumulated **at least** two (2) prior
10 unrelated felony convictions.
11 (b) The state may not seek to have a person sentenced as a habitual
12 offender for a felony offense under this section if:
13 (1) the offense is a misdemeanor that is enhanced to a felony in
14 the same proceeding as the habitual offender proceeding solely
15 because the person had a prior unrelated conviction; **or**
16 (2) the offense is an offense under IC 9-30-10-16 or
17 IC 9-30-10-17. ~~or~~

SB 264—LS 6917/DI 106+



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(3) all of the following apply:

(A) The offense is an offense under IC 16-42-19 or IC 35-48-4;

(B) The offense is not listed in section 2(b)(4) of this chapter;

(C) The total number of unrelated convictions that the person has for:

(i) dealing in or selling a legend drug under IC 16-42-19-27;

(ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);

(iii) dealing in a schedule I, H, HH controlled substance (IC 35-48-4-2);

(iv) dealing in a schedule IV controlled substance (IC 35-48-4-3); and

(v) dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one (1).

(c) A person has accumulated two (2) prior unrelated felony convictions for purposes of this section only if:

(1) the second prior unrelated felony conviction was committed after sentencing for the first prior unrelated felony conviction; and

(2) the offense for which the state seeks to have the person sentenced as a habitual offender was committed after sentencing for the second prior unrelated felony conviction.

(d) A conviction does not count for purposes of this section as a prior unrelated felony conviction if:

(1) the conviction has been set aside; or

(2) the conviction is one for which the person has been pardoned.

or

(3) all of the following apply:

(A) The offense is an offense under IC 16-42-19 or IC 35-48-4;

(B) The offense is not listed in section 2(b)(4) of this chapter;

(C) The total number of unrelated convictions that the person has for:

(i) dealing in or selling a legend drug under IC 16-42-19-27;

(ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);

(iii) dealing in a schedule I, H, HH controlled substance (IC 35-48-4-2);

(iv) dealing in a schedule IV controlled substance (IC 35-48-4-3); and

(v) dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one (1).

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(e) The requirements in subsection (b) do not apply to a prior unrelated felony conviction that is used to support a sentence as a habitual offender. A prior unrelated felony conviction may be used under this section to support a sentence as a habitual offender even if the sentence for the prior unrelated offense was enhanced for any reason, including an enhancement because the person had been convicted of another offense. However, a prior unrelated felony conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repealed), or IC 9-12-3-2 (repealed) may not be used to support a sentence as a habitual offender.

(f) If the person was convicted of the felony in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing under IC 35-38-1-3.

(g) The state may introduce evidence of the person's prior criminal convictions in a habitual offender sentencing hearing under this section.

~~(g)~~ **(h)** A person is a habitual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated **at least** two (2) prior unrelated felony convictions, **even if one (1) or more of the prior unrelated felony convictions were previously offered by the state to have the person sentenced as a habitual offender in an earlier habitual offender proceeding.**

~~(h)~~ **(i)** The court shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the advisory sentence for the underlying offense nor more than three (3) times the advisory sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years.

SECTION 2. IC 35-50-2-8.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 8.3. (a) As used in this section, "felony drug offense" means an offense to which all of the following apply:**

(1) The offense is a felony offense under IC 16-42-19 or IC 35-48-4.

(2) The offense is not listed in section 2(b)(4) of this chapter.

(b) Except as otherwise provided in this section, the state may seek to have a person sentenced as a habitual drug offender for a felony drug offense by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated at least three (3) prior unrelated felony drug offense convictions.

(c) The state may not seek to have a person sentenced as a

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1 habitual drug offender for a felony drug offense under this section
 2 if the felony drug offense is a misdemeanor that is enhanced to a
 3 felony in the same proceeding as the habitual drug offender
 4 proceeding solely because the person had a prior unrelated
 5 conviction.

6 (d) A person has accumulated three (3) prior unrelated felony
 7 drug offense convictions for purposes of this section only if:

8 (1) the second prior unrelated felony drug offense conviction
 9 was committed after sentencing for the first prior unrelated
 10 felony drug offense conviction;

11 (2) the third prior unrelated felony drug offense conviction
 12 was committed after sentencing for the second prior unrelated
 13 felony drug offense conviction; and

14 (3) the felony drug offense for which the state seeks to have
 15 the person sentenced as a habitual drug offender was
 16 committed after sentencing for the third prior unrelated
 17 felony drug offense conviction.

18 (e) A conviction does not count for purposes of this section as a
 19 prior unrelated felony drug offense conviction if:

20 (1) the conviction has been set aside; or

21 (2) the conviction is one for which the person has been
 22 pardoned.

23 (f) The requirements in subsection (c) do not apply to a prior
 24 unrelated felony drug offense conviction that is used to support a
 25 sentence as a habitual drug offender. A prior unrelated felony drug
 26 offense conviction may be used under this section to support a
 27 sentence as a habitual drug offender even if the sentence for the
 28 prior unrelated felony drug offense was enhanced for any reason,
 29 including an enhancement because the person had been convicted
 30 of another offense.

31 (g) If the person was convicted of the felony drug offense in a
 32 jury trial, the jury shall reconvene for the sentencing hearing. If
 33 the trial was to the court or the judgment was entered on a guilty
 34 plea, the court alone shall conduct the sentencing hearing under
 35 IC 35-38-1-3.

36 (h) A person is a habitual drug offender if the jury (if the
 37 hearing is by jury) or the court (if the hearing is to the court alone)
 38 finds that the state has proved beyond a reasonable doubt that the
 39 person had accumulated three (3) prior unrelated felony drug
 40 offense convictions.

41 (i) The court shall sentence a person found to be a habitual drug
 42 offender to an additional fixed term that is not less than the

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1 advisory sentence for the underlying felony drug offense nor more
2 than three (3) times the advisory sentence for the underlying felony
3 drug offense. However, the additional sentence may not exceed
4 thirty (30) years.

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SENATE MOTION

Madam President: I move that Senator Young R be added as coauthor of Senate Bill 264.

WALKER

SENATE MOTION

Madam President: I move that Senator Drozda be added as coauthor of Senate Bill 264.

WALKER

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 264, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 3, after "(a)" insert "**This section does not apply to a person whose underlying felony offense and prior unrelated felony convictions are all felony drug offenses (as defined in section 8.3 of this chapter).**"

Page 1, line 12, after "conviction;" insert "**or**".

Page 1, line 14, delete ";" and insert ".".

Page 1, line 14, strike "or".

Page 1, strike lines 15 through 17.

Page 2, strike lines 1 through 12.

Page 2, line 22, after "set aside;" insert "**or**".

Page 2, line 23, delete ";" and insert ".".

Page 2, strike lines 24 through 39.

Page 3, line 12, after "introduce" insert "**evidence of**".

Page 3, line 12, delete "entire criminal history" and insert "**prior criminal convictions**".

Page 3, line 13, delete "as evidence".

Page 3, after line 26, begin a new paragraph and insert:

"SECTION 2. IC 35-50-2-8.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2007]: **Sec. 8.3. (a)** As used in this section, "felony drug offense" means an offense to which all of the following apply:

(1) The offense is a felony offense under IC 16-42-19 or IC 35-48-4.

(2) The offense is not listed in section 2(b)(4) of this chapter.

(b) Except as otherwise provided in this section, the state may seek to have a person sentenced as a habitual drug offender for a felony drug offense by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated at least three (3) prior unrelated felony drug offense convictions.

(c) The state may not seek to have a person sentenced as a habitual drug offender for a felony drug offense under this section if the felony drug offense is a misdemeanor that is enhanced to a felony in the same proceeding as the habitual drug offender proceeding solely because the person had a prior unrelated conviction.

(d) A person has accumulated three (3) prior unrelated felony drug offense convictions for purposes of this section only if:

(1) the second prior unrelated felony drug offense conviction was committed after sentencing for the first prior unrelated felony drug offense conviction;

(2) the third prior unrelated felony drug offense conviction was committed after sentencing for the second prior unrelated felony drug offense conviction; and

(3) the felony drug offense for which the state seeks to have the person sentenced as a habitual drug offender was committed after sentencing for the third prior unrelated felony drug offense conviction.

(e) A conviction does not count for purposes of this section as a prior unrelated felony drug offense conviction if:

(1) the conviction has been set aside; or

(2) the conviction is one for which the person has been pardoned.

(f) The requirements in subsection (c) do not apply to a prior unrelated felony drug offense conviction that is used to support a sentence as a habitual drug offender. A prior unrelated felony drug offense conviction may be used under this section to support a sentence as a habitual drug offender even if the sentence for the prior unrelated felony drug offense was enhanced for any reason, including an enhancement because the person had been convicted of another offense.

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(g) If the person was convicted of the felony drug offense in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing under IC 35-38-1-3.

(h) A person is a habitual drug offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated three (3) prior unrelated felony drug offense convictions.

(i) The court shall sentence a person found to be a habitual drug offender to an additional fixed term that is not less than the advisory sentence for the underlying felony drug offense nor more than three (3) times the advisory sentence for the underlying felony drug offense. However, the additional sentence may not exceed thirty (30) years."

and when so amended that said bill do pass.

(Reference is to SB 264 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 9, Nays 0.

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